

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

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CC:CORP:02

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Date:

June 11, 2009

LEGEND

Parent =

Foreign Parent =

A Funds =

B Funds =

Sub =

State X =

Year 1 =

Year 2 =

Date A =

Date B =

€A =

€B =

€C =

€D =

€E =

Dear :

This letter responds to your February 9, 2009 request for a ruling regarding the federal income tax characterization of Parent's outstanding indebtedness for purposes of I.R.C. section 382. The information provided in that request and in later correspondence is summarized below.

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

SUMMARY OF FACTS

Parent, a State X corporation, is the common parent of an affiliated group of corporations (the "Parent Group") that files a consolidated federal income tax return. Foreign Parent owns all of Parent's common stock. The A Funds and the B Funds own equally all of Parent's preferred stock.

In Year 1, Parent formed Sub, a State X corporation, by contributing €A in exchange for common stock and €B in the form of shareholder loans, which were characterized as equity for U.S. federal income tax purposes. In addition, Sub borrowed €C from a consortium of lenders in the form of payment-in-kind notes (the "PIK Notes").

In Year 2, Sub converted under State X law to a limited liability company ("Sub LLC") disregarded as an entity separate from Parent for U.S. federal income tax purposes. On Date A, which was after Sub's conversion to Sub LLC, the PIK Notes were refinanced with €D borrowed by Sub LLC from a consortium of lenders in the form of a payment-in-kind facility (the "PIK Facility"). As of Date B, the total outstanding principal amount of the PIK Facility was €E. As a consequence of Sub LLC's classification as a disregarded entity, the PIK Facility is treated for U.S. federal income tax purposes as an obligation of Parent and is the only outstanding debt of Parent.

As a result of market conditions and competition in its industry, the Parent Group has not enjoyed any substantial growth, and it is unclear whether at the current time Parent's common stock or preferred stock has any value. Given business and market conditions, it is believed that recent transfers of the PIK Facility have occurred at a significant discount relative to its principal amount.

REPRESENTATIONS

Parent makes the following representations with respect to the PIK Facility:

- (a) Parent's only classes of outstanding stock are the common stock owned by Foreign Parent and the preferred stock owned by the A Funds and B Funds.
- (b) At the time of the issuance of the PIK Facility, the financial projections of the Parent Group indicated that the Parent Group would be able to make all payments of principal and interest on the PIK Facility as they come due.
- (c) The PIK Facility does not entitle any holders to receive dividends, vote for directors, or receive liquidation proceeds.
- (d) The holders of the PIK Facility do not have control over Parent nor do they have influence over the management of Parent.

RULINGS

Based solely on the information submitted and the representations set forth above, we rule that the PIK Facility will not be treated as stock under Treas. Reg.

§ 1.382-2T(f)(18)(iii) at any time through the date that this letter is issued. In addition, for dates after this letter is issued, the PIK Facility will not be treated as stock under Treas. Reg. § 1.382-2T(f)(18)(iii) provided that: (1) Parent (nor any person related to Parent within the meaning of sections 267(b) or 707(b)) is not actively involved in placing the PIK Facility with acquiring persons, (2) the PIK Facility is not issued or transferred to an acquiring person and such person becomes the owner of more than 50 percent of the PIK Facility, and (3) there is no change in the terms of the PIK Facility

that is material either in kind or extent. No opinion is expressed under Treas. Reg. § 1.382-2T(f)(18)(iii) if any of the foregoing events occur.

For purposes of this ruling, an acquiring person and all persons related within the meaning of sections 267(b) or 707(b) will be treated as a single person. Also for purposes of this ruling, if two or more persons would be treated as making a coordinated acquisition under Treas. Reg. § 1.382-3(a)(1)(i), such persons will be treated as a single person.

CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax treatment of the PIK Facility under other provisions of the Code or the regulations or general principles of tax law.

PROCEDURAL STATEMENTS

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Virginia S. Voorhees
Senior Technician Reviewer, Branch 6
Office of Associate Chief Counsel (Corporate)